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**IN THE UNITED STATES DISTRICT COURT**

**DISTRICT OF OREGON**

**PORTLAND DIVISION**

**FLIR SYSTEMS, INC.**, an Oregon  
corporation,

Plaintiff,

vs.

**THOMAS L. GAMBARO**, an individual  
d/b/a **PATENT ENFORCEMENT  
COMPANY; MOTIONLESS  
KEYBOARD COMPANY**, an Oregon  
corporation.

Defendants.

Civil No.: 3:10-cv-00231-BR

**MEMORANDUM IN SUPPORT OF  
PLAINTIFF'S UNOPPOSED  
MOTION FOR VOLUNTARY  
DISMISSAL WITHOUT PREJUDICE  
OF CERTAIN CLAIMS**

Plaintiff FLIR Systems, Inc. (“FLIR”) submits this memorandum in support of Plaintiff’s Unopposed Motion for Voluntary Dismissal Without Prejudice of Certain Claims. On November 17, 2011, this Court granted FLIR’s motion for default judgment (Dkt. No. 191), struck Defendant Thomas L. Gambaro’s answer and other pleadings, and entered an order of default against Defendant Gambaro as a sanction for his vexatious litigation practices and his willful and repeated violations of court orders. Opinion & Order (Dkt. No. 213) at 22. The Court directed FLIR to submit a proposed form of default judgment for the Court’s consideration. *Id.* FLIR is contemporaneously filing its proposed default judgment.

The Court’s granting of FLIR’s motion for default and its striking of Defendant Gambaro’s answer and pleadings dispose of all of Defendant Gambaro’s counterclaims. FLIR’s proposed default judgment addresses FLIR’s requests for judicial declarations that none of the FLIR Accused Devices infringe - directly or indirectly or under the doctrine of equivalents – any claim of US Patent Number 5,332,322 (the “‘322 Patent”) or US Design Patent Number 405,071. Remaining are FLIR’s claims for a judicial declaration that the ‘322 Patent is invalid, for a judicial declaration that the ‘322 Patent is unenforceable for patent misuse, and for an award of attorney fees pursuant to 35 USC § 285.

FLIR wishes to voluntarily dismiss these remaining claims without prejudice to its right to bring them at a later date. Counsel for FLIR has conferred with Defendant Gambaro; he does not oppose this motion for voluntary dismissal. In light of that, as well

as the Court's entry of order of default against Defendant Gambaro and the Court's broad inherent powers "to manage [its] own affairs so as to achieve the orderly and expeditious disposition of cases" (*see Link v. Wabash R.R.*, 370 U.S. 626, 630-31, 82 S.Ct. 1386, 8 L.Ed.2d 734 (1962)), this Court should grant FLIR's motion for voluntary dismissal without prejudice of the remaining claims.

### **CONCLUSION**

Based upon the foregoing, FLIR respectfully requests that the Court grant FLIR's Unopposed Motion for Voluntary Dismissal Without Prejudice of Certain Claims.

DATED this 1st day of December, 2011.

#### **BICKEL & BREWER**

William A. Brewer, III, *Admitted Pro Hac Vice*

Michael J. Collins, *Admitted Pro Hac Vice*

Farooq A. Tayab, *Admitted Pro Hac Vice*

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Of Attorneys for Plaintiff FLIR Systems,  
Inc.

### **CERTIFICATE OF SERVICE**

I certify that on December 1, 2011, I served or caused to be served a true and complete copy of the foregoing **MEMORANDUM IN SUPPORT OF PLAINTIFF'S UNOPPOSED MOTION FOR VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF CERTAIN CLAIMS** on the party or parties listed below as follows:

Thomas L. Gambaro  
individually and dba  
Patent Enforcement Company  
P.O. Box 14741  
Portland, OR 97293  
Defendants *Pro Se*

\_\_\_\_\_  
Via CM / ECF Filing  
\_\_\_\_\_  
Via First Class Mail,  
Postage Prepaid  
\_\_\_\_\_  
Via Email (courtesy copy)  
\_\_\_\_\_  
Via Personal Delivery

**HARRANG LONG GARY RUDNICK P.C.**

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